IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5155 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRAKUMAR MANGILAL SURANA (JAIN)

Versus

DISTRICT MAGISTRATE BANASKANTHA

Appearance:

MR PRAVIN GONDALIYA for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 8.3.2004, by which he is detained as a 'bootlegger' under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA",

for short). Along with the detention order, the petitioner-detenu was also served with the grounds of detention.

In the grounds of detention, there is a reference about one criminal case registered against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. The authority, after considering the said case, has detained the petitioner under PASA. It is the aforesaid order which is impugned in this petition.

It is submitted by Mr.Gondaliya that except the registered case, there is no material against the petitioner for detaining him under PASA. He submitted that even the statements of witnesses have not been recorded.

The learned Advocate for the petitioner submitted that the only material, based on which the detention order is passed, is the sole registered criminal case and that by itself cannot be said to be a material for the purpose of holding that the petitioner's activities had become a threat to the public order and public health. He further submitted that necessary material in this regard is totally wanting in the body of the detention order itself. According to the learned Advocate for the petitioner, in large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health, as, at the most, it can be said that the activities of the petitioner are in breach of law and order.

To substantiate the above say, the learned Advocate for the petitioner has relied upon the decision of a Division Bench of this Court, rendered in L.P.A. No.223 of 2000, wherein this Court held as under in paragraph 5 :-

" ... ...

5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State of Gujarat (Supra), i.e. with regard to the

presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the

only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants.

... ..."

In view of the judgment of the Division Bench of this Court, it cannot be said that the petitioner has violated public order, as, at the most, it can be said that there is a breach of law and order.

The petition is not even resisted by the respondents, by filing an affidavit-in-reply. Since the averments made in the petition remain uncontroverted in view of the fact that no affidavit-in-reply is filed by the detaining authority, and considering the fact that, in view of the judgment of the Division Bench in LPA No.223 of 2000, the sole registered case may not be enough to come to the conclusion that the petitioner has violated public order, as such cases can be stated to be in breach of law and order, and, therefore, the present petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless the detenu is required in connection with any other case. The Rule is made absolute accordingly.

At this stage, the learned Advocate for the petitioner, made a voluntary statement that the case alleged against the petitioner is regarding bringing some foreign liquor from the State of Rajasthan. He submitted that in order to see that the petitioner may not repeat such type of cases, in future, and, in order to see that he is able to resist the temptation, he will not lave Ahmedabad City and Ahmedabad District upto 30th October, 2004. This voluntary statement is recorded. It is for the authority to monitor the same.

16th August, 2004 (P.B. Majmudar, J.)

***

(apj)